



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0727; FRL-10421-01-R4]

Air Plan Approval; Kentucky;

Revision to Federally Enforceable District Origin Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Jefferson County portion of the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Kentucky Energy and Environment Cabinet (Cabinet) on June 15, 2022. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County). The District's revision modifies the permit application timing requirements in the Federally Enforceable District Origin Operating Permits (FEDOOP) rule in the Jefferson County portion of the Kentucky SIP (Jefferson County Local Implementation Plan, or LIP). EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2022-0727 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a

written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams-Miles, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9144. Ms. Williams-Miles can also be reached via electronic mail at williamsmls.pearlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

On June 15, 2022, the Commonwealth of Kentucky submitted changes to the Jefferson County LIP for EPA approval.^{1,2} EPA is proposing to approve changes to Section 4 – *Permit Applications*, of the District’s Regulation 2.17 – *Federally Enforceable District Origin Operating Permits*.³ Under Regulation 2.17, Section 1.1, a FEDOOP is an operating permit that contains a federally enforceable condition, limit, or provision that is issued to a stationary source that is not, or would not subsequently be, required to obtain a permit under Regulation 2.16 – *Title V Operating Permits*. The changes in the June 15, 2022, submission add timing requirements for sources applying for FEDOOP permits that are similar to those in Regulation

¹ The EPA received this submission on June 13, 2022, in a letter dated June 15, 2022. Throughout this notice of proposed rulemaking, this submission will be referred to as the June 15, 2022, submission.

² In 2003, the City of Louisville and Jefferson County governments merged, and the “Jefferson County Air Pollution Control District” was renamed the “Louisville Metro Air Pollution Control District.” However, to be consistent with the terminology used in the subheading in Table 2 of 40 CFR 52.920(c), throughout this notice we refer to regulations contained in the Jefferson County portion of the Kentucky SIP as the “Jefferson County” regulations.

³ The June 15, 2022, submittal contains changes to other Kentucky SIP-approved rules that are not addressed in this notice. EPA will act on those rules in separate actions.

2.16. Section II of the preamble of this document provides EPA's analysis and rationale for proposed approval of this revision.

II. Analysis of Kentucky's SIP Revision

The June 15, 2022, submission revises Regulation 2.17 by adding four timing requirements under Section 4 – *Permit Applications*, adding new prefatory language in Section 4.2, and renumbering the remaining subsections within Section 4. Turning to the four new timing requirements, first, subsection 4.2.1 is added to require that sources not previously required to obtain a permit under Regulation 2.17 but that become subject to an applicable requirement after the effective date of the regulation must submit a permit application within 12 months from the time at which it became subject to Regulation 2.17.

Second, subsection 4.2.2 is added to require that a source “constructing, reconstructing, or modifying,” shall submit a complete FEDOOP permit application within 12 months after commencing operation. If an existing permit would prohibit construction or a change in operation, the source would be required to obtain a permit revision before commencing operation.

Third, subsection 4.2.3 is added to state that a source that is required to reopen an existing permit pursuant to the requirements of Section 6 of Regulation 2.17 must submit a complete application for a permit revision within six months after notification by the District that the permit must be reopened.

Finally, subsection 4.2.4 is added to require that a complete permit application must be submitted to the District at least six months prior to the date of permit expiration and in accordance with Section 6 of Regulation 2.17 for permit renewal.

These changes to Regulation 2.17 merely add timing requirements for submitting complete FEDOOP applications similar to the timing requirements in Regulation 2.16. As such, EPA has preliminarily determined that these changes do not interfere with any applicable requirement concerning attainment of the national ambient air quality standards and reasonable

further progress or any other applicable requirement of the Act. For these reasons, EPA is proposing to approve the changes to the Jefferson County LIP.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as described in Section II of this preamble, EPA is proposing to incorporate by reference Jefferson County's Regulation 2.17 – *Federally Enforceable District Origin Operating Permits*, version 5, with a local-effective date of March 16, 2022, which adds timing requirements to the permit application process. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the aforementioned changes to Regulation 2.17 – *Federally Enforceable District Origin Operating Permits*, with a local-effective date of March 16, 2022, into the Jefferson County LIP. EPA is proposing to approve these changes because they are consistent with the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications as specified by Executive

Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 20, 2022.

Daniel Blackmon.
Regional Administrator,
Region 4.

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